
**RECONSTRUCTION OF THE POLITICAL PARTY COURT ROLE AS
THE DECISIVE ORGAN ON INTERNAL CONFLICT OF POLITICAL
PARTIES IN INDONESIA'S CONSTITUTIONAL DESIGN**

Bachtiar

Student of Doctoral Program of Law Science of Trisaksi University Jakarta
Lecturer of Law Faculty of Pamulang University

ABSTRACT

In Indonesian constitutional design, the Political Party Court is an organ of political party that play a role in the resolution of internal conflicts of political parties. Political Party Court is oriented to strengthen the independence of political parties in the exercise of its functions as one of the pillars of democracy, especially the conflict resolution function. Nevertheless, the existence of the Political Party Court becomes meaningless due to the ambiguity of setting their own norms in the Political Party Laws. There are a number of norms related to the existence and role of the Political Party Court that seem ambiguous and give rise to legal complications in its application. Regarding that, it is time for the existence and role of the Political Party Court should be reconstructed in accordance with the spirit of the internal democratization of political parties. Reconstruction of Political Party Court's role is a diligence effort of political of law which must be realized in order to ground the principles of constitutional democracy as a model of the desired democratic constitution. Democracy that will be built and maintained in internal political party is a democracy based on the rule of law. Included in this is the settlement of disputes or internal conflicts of political parties should refer to the mechanisms of the Political Party Court. The presence of the Political Party Court is none other than to take care of internal democracy which is based on the law. In this paper, it will be described the legal issues related to the existence of the Political Party Court, the problems related normative political party's internal conflict resolution in the Political Party Court, and the urgency of strengthening the Political Party Court in the perspective of democracy. The purpose of this paper writing is to find the ideal role of the Political Party Court as decisive organ on internal conflicts in political parties in Indonesian constitutional design.

Keywords: Reconstruction, the Court Party, Internal Conflict, Constitutional.

1. INTRODUCTION

In a modern democracy state, political parties have a very important position and role in every democratic system. Political parties play a strategic liaison role between government processes and citizens. The role of such political parties is also confirmed by Satori "the primary democratic function of politic parties is to link the citizenry with the government".¹ According to Susan Scarrow "Parties can help to articulate group aims, nurture political leadership, develop and promote policy alternative, and present voters with coherent electoral alternatives".² Therefore, it is not excessive if the existence of political parties in democracies is an inevitability as Harold J. Laski "the life of democratic state is built upon the party system".³ Even, there are many scientist argue that the political parties actually determine democracy, as expressed by Schattscheider "political parties created democracy".⁴ The existence of political parties in the democratic system is a consequence, even this is a congenital (nature) of recognition and guarantee of participation of factions that live in society.⁵ That is why democracy without political parties will lose their meaning, in order that political parties become an important instrument in democracy,⁶ therefore the existence of political parties is very important to strengthen the degree of institutionalization in every democratic political system as expressed by Schattscheider "modern democracy is unthinkable save in terms of the parties".⁷

As a democratic entity that is established in order to struggle for the aspirations and wishes of the members or the constituents, of course within the political party has various interests. Many conflicts of interests have the potential to trigger internal conflicts, as Maswadi Rauf said that "there are still many conflicts of interest in political parties. Many of these conflicts of interest can create internal party divisions. Whereas, the division of the political party should be solved for the sake of the state so as not to impact on the political stability of the country".⁸ To maintain the existence of political parties as a pillar of democracy from the threat of division due to internal conflicts that could impact on the political stability of the state, it is necessary to have a mechanism to resolve internal conflicts of political parties. In the context of Indonesia's constitutional democratic system, the instrument for resolving internal political party conflict is

¹ Josh Maiyo, "Political Parties and Intra-Party Democracy in East-Africa – From Representative to Partisipatory Democracy", *Thesis*, (Netherland: Laiden University, 2008), p. 19.

² Susan Scarrow, "Development in Party Communications" in *Implementing Intra-Party Democracy*, (USA: National Democratic Institute for International Affairs (NDI), 2005), p. 3.

³ Harold J. Laski, *Grammar of Politics*, (Yale: Yale University Press, 1925), p. 295.

⁴ Jimly Asshiddiqie, *Kemerdekaan Berserikat, Pembubaran Partai Politik dan Mahkamah Konstitusi*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MKRI, 2006), p. 52.

⁵ Bagir Manan, "Demokratisasi Partai Politik", Makalah pada Konferensi Nasional Hukum Tata Negara Ke-3, (Padang: Pusat Studi Konstitusi Universitas Andalas, 5 September 2016), p. 3.

⁶ Firdaus, "Implikasi Sistem Kepartaian Terhadap Stabilitas Pemerintahan Dalam Sistem Ketatanegaraan Indonesia Sebelum dan Sesudah Amandemen UUD 1945", *Disertasi*, (Bandung: Pascasarjana Universitas Padjadjaran, 2012), p. 35.

⁷ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: RajaGrafindo Persada, 2014), p. 401-402.

⁸ Debora Sanur L, "Manajemen Konflik Partai Politik", *Jurnal Info Singkat*, Vol. VII, No.07/I/P3DI/April/2015, p. 17.

solved through an institution which by Political Party Laws (Undang-Undang Nomor 2 Tahun 2008 Jo Undang-Undang Nomor 2 Tahun 2011) is called the Political Party Court. In the optics of the Political Party Laws, the existence of the Political Party Court is found in Article 32 paragraph (2), "*the settlement of internal disputes of Political Parties shall be conducted by a Political Party Court or other term established by Political Parties*". This assignment places the Political Party Court as the sole organ of political parties which is free and independent in settling internal political party disputes. The Political Party Court by the Political Party Laws is authorized to resolve internal party conflicts, wherein the resolution according to Article 32 paragraph (1) refers to the provisions stipulated in the Articles of Association / Memorandum of Association (AD/ART) of the party concerned.

Although the Political Party Court is used as a means of resolving the internal conflict of political parties, the implementation of the conflict is still related to the issue, which is caused by the ray of the regulation of the Political Party Court in the Political Party Laws itself. There are a number of norms that regulate the existence of the Political Party Court in the Political Party Laws is ambiguous and multi-interpretation. On the one hand, the decision of the Political Party Court is final and binding internally as mentioned in Article 32 paragraph (5) of the Political Party Laws, but on the other hand the final and binding nature becomes meaningless because it still opens space for legal remedies through the courts if the settlement is not reached as mentioned in Article 33 paragraph (1) of the Political Party Laws. Such a regulatory model precisely causes the existence of the Political Party Court to be meaningless and does not provide benefits to members of political parties in conflict. For the parties to the conflict, internal party dispute resolution through the court route takes precedence, because it is believed to provide more legal certainty. This is the real obstacle of the Political Party Court to exercise its authority, due to an element of distrust of political parties in resolving their own internal disputes. This situation caused the internal conflict of political parties to be protracted and even led to the settlement in court, as experienced by Golkar Party, PPP and Fahri Hamzah's dismissal conflict by PKS Party. Therefore, the problem of interpretation of the regulation of the Political Party Court is time to be terminated so as not to cause ambiguity in its application.

Under such a framework, the Political Party Laws must be amended and the amendment must be made to strengthen the position and role, to regulate the composition and filling of the membership of the Political Party Court more objectively and to determine explicitly the internal dispute settlement channel by the Political Party Court until the involvement of the state court in the settlement Internal party dispute. With that step, the expectation of a more effective internal dispute resolution through the Political Party Court can certainly be relied upon. If the Political Party Laws only gives full space to the Political Party Court or any other such title, then the Political Party Laws also eliminates the dispute resolution space at any institution. Only in such a

way can the independence and authority of the Political Party Court be preserved in the institution of constitutional democracy.

2. METHODOLOGY

The purpose of writing this paper is to know and analyze the existence and role of the Court as an organ of internal party conflict breakers of political parties in the Political Party Laws. In addition, to find the reconstruction of the ideal role of the Political Party Court as an organ of internal party conflict breaker within the framework of Indonesia's constitutional democratic system. Therefore, the writing of this paper relies on legal research methods, ie research applied or applied specifically to the science of law, or research conducted to solve the legal issues proposed. The type of research used is normative legal research. The use of normative legal research is conducted with the consideration that this research is based on legal norms contained in legislation and other legal materials. The legislation in question is the Constitution of the Republic of Indonesia, Political Party Laws and legislation which have relevance to the legal issues under investigation. The legal materials used in this study consist of primary legal materials and secondary legal materials. The technique of collecting legal material in this paper is done through literature study, which emphasizes on document search techniques. The collected legal materials are identified and then systematically arranged. To ensure the validity, objectivity and reliability of the collected legal material, it is done by triangulation examination techniques. The legal materials are then analyzed using legal hermeneutic methods, namely the method of interpretation of the text in which the methods and techniques of interpreting are done holistically in the framework of the interrelationship between text, context, and contextualization.

3. RESULT AND DISCUSSION

1. Role of the Political Party Court: between Sollen and Sein

The existence and role of the Political Party Court in the political party system in Indonesia is basically indefatigable from the interpretation of the norms that govern it. This fact is illustrated in various opinions among experts who still question the regulatory norms that led to the problem of interpretation. The crucial thing that is often questioned regarding the existence of the Political Party Court is the determination of the final and binding decision of the Political Party Court. Article 32 Paragraph (5) shall be deemed as "*a decision of a judge of a Political Party Court or other term which is final and internally binding in terms of disputes concerning stewardship*". If using a grammatical interpretation, then this article is meant only related to "*disputes concerning stewardship*". Meanwhile, other types of disputes as mentioned in the Elucidation of Article 32 paragraph (2) such as (i) violations of the rights of members of political

parties,(ii) dismissal for no apparent reason, (iii) abuse of authority, (iv) financial accountability, and (v) an objection to the decision of a political party, not subject to the norms of the aforesaid article. In this sense, it can be interpreted that when the Political Party Court, for example, decides disputes such as "objections to the decisions of political parties", the nature of the verdict is not final and binding, in the sense that legal efforts can be made. Therefore, any decision of the relevant Political Party Court "*disputes concerning stewardship*" shall be final and binding and hence no legal remedy can be made against such decision.

Such arrangements seem ambiguous and lead to legal complications in its application. On the one hand, "*the decision of the Court Party is final and internally binding in terms of disputes concerning stewardship*" as it is said in Article 32 paragraph (5), but on the other hand Article 33 Paragraph (1) provides "*In the event that the settlement of disputes referred to in Article 32 is not reached, dispute settlement shall be conducted through a district court*". How can a final and internally binding verdict be applied to a political party, in the end a legal effort can be made through judicial mechanisms in the district court even to the Supreme Court. While in relation to the type of dispute other than disputes concerning stewardship, the interpretation of this article is in no way final and binding when the Political Party Court dismisses the dispute so that those who disagree with the court's decision are still allowed to make an objection through the judicial mechanism.

It is also affirmed by Saldi Isra when giving testimony as an expert in the judicial review of Political Parties Act in the Constitutional Court with the following description :

“The granting of authority to the party's internal settlement mechanism is still halfhearted. On the one hand, the formulation of Article 32 calls the decision of the party management dispute to be final-binding. On the other hand, even Article 33 Paragraph (1) of the Political Party Laws actually withdraws the authority because the decision of the Political Party Court may be sued to the district court if the settlement is not reached. The full authority of political parties to complete the party stewardship in the Political Party Court is precisely cut down by the formulation of Article 33 paragraph (1) of the Political Party Laws. This inconsistency both the sovereignty principle of political parties and fellow norms of the Political Party Laws Potential Political leads to legal uncertainty that disadvantages citizens”.⁹

It should not be justified if the internal party dispute settlement is brought to district court because the parties are not satisfied or do not enforce the decision of the Political Party Court, because the nature of the decision of the Political Party Court itself according to Article 32

⁹ “Aturan Mahkamah Partai Dinilai Inkonsisten”, www.hukumonline.com, accessed on 30 Juni 2016.

paragraph (5) is final and binding. Therefore for any reason, when the verdict is final and internally binding, there should be no reason to file it in court. There should no longer be a mechanism for resolving internal disputes between political parties through the court and seeing the judgments of the Political Party Court as a complement to the internal political party's problem solving system. Supposedly the Political Party Court was formed to strengthen the spirit of institutionalization of political parties with a democratic and accountable law principles, so as to realize the arrangement and perfection of political parties in Indonesia as the purpose of the Political Party Laws was formed.

Another crucial matter, Article 32 Paragraph (1) of the Political Party Laws mandates that political party disputes are resolved by internal political parties as regulated in the AD/ART. The problem, AD/ART political parties in general also did not give a clear explanation of how the mechanism of law in the Political Party Court. This can be traced from various political parties' AD/ART where internal conflict resolution mechanisms are not set in concrete and clear manner, which can lead to legal uncertainty and open up potential internal conflicts. This has made the internal conflicts of political parties become protracted and even leads to a settlement at the court level, as experienced by the Golkar Party and PPP. On this side the ambiguity of the forming of a Political Party Laws that imposes a dispute settlement based on the party's AD/ART alone, regardless of the impact. Such a regulatory model would be a cause for conflict parties to prioritize internal party dispute settlement through court, because it is believed to provide more legal certainty, so that the existence of the Political Party Court for members of the conflict does not provide benefits.

This situation is an obstacle for the Political Party Court to exercise its authority, due to the distrust of political parties in resolving their own internal disputes. The existence of the Political Party Court has so far not resulted in maximum results and looks undemocratic, because it is unable to provide justice to justice seekers, such as the conflict experienced by PPP and Golkar Party. Different cases occurred in the PKS related to Fahri Hamzah dismissal from the party's membership and management. Decisions that have been made at the level of the Political Party Court are not applicable even though the decision of the Political Party Court is final and binding. The question is what is wrong with the word "final and binding" so it can not be implemented. Therefore, the problem of interpretation of the existence of the Political Party Court is time to end by reformulating the regulation norms that are clear so as not to cause ambiguity in its application. The Political Parties Act is certainly necessary and urgent to be changed. Changes must be made towards strengthening positions and roles, regulating the composition and filling of a more objective membership of the Political Party Court and clearly defining the internal dispute settlement process by the Political Party Court until the involvement of the district courts in internal party dispute resolution can be avoided. With that step, the

expectation of a more effective internal dispute resolution through the Political Party Court can certainly be relied upon.

2. Reconstruction of the Ideal Role of the Political Party Court

It must be acknowledged that the existence of political parties has not shown its function in encouraging the realization of a democratic life within the state. Even the tragic, not a few political parties are still plagued by internal conflicts as a result of not institutionalized spirit and paradigm of internal party conflict resolution. Therefore, the need for democratization of political parties internally is an urgent answer. This need is based on the consideration that in a democratic system, a political party is one of the main actors of democracy. Even according to Richard and Crotty, "there is no democratic system without a political party",¹⁰ or which Ghasan Salame expressed, "there is no democracy without democrats".¹¹ However, political parties create democracy and modern democracy can not be separated from the party, Schattschneider said.¹²

According to Linz and Stephan, the development of political parties is part of the development of "political society" to control the power of the state and its political apparatus.¹³ This indicates that absolutely political parties must be democratic first before political parties talk about democratization in the life of nation and state. How can political parties establish democratization externally, when the internal democratization of the party's body itself is not implemented or is well established and responsible. Democratization in the body of political parties is a necessity that must be implemented, if you want to see the democratic political system that was held. That is, internal political parties must also be democratic. The course of democracy within the internal political party is not determined or independent of the good will of the party leader. According to Surbakti and Supriyanto, the party's internal democracy requires that the whole process of making and implementing decisions to carry out party functions in an open, participatory and deliberative manner based on legislation, AD/ART and party rules.¹⁴

Political parties must be managed democratically also based on the reason that political parties assume responsibility as one of the actors who function as conflict regulators in society. Political parties serve as a means of aggregation of interests which channel different interests through

¹⁰ Quated from Katz S. Richard & William Crotty (ed), *Handbook of Party Politics*, (London: Sage Publication, 2006), p. 7.

¹¹ Tim ICCE, *Buku Pendidikan Kewarganegaraan (Suplemen)*, (Jakarta: ICCE-TAF, 2004), p. 107.

¹² Cross P. William & Katz S. Richards, *The Challenges of Intra-Party Democracy*, (United Kindom: Oxford University Press, 2013), p. 1.

¹³ Juan J Linz & Alfred Stepan, *Problem of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, 1996, p. 38-54.

¹⁴ Ramlan Surbakti dan Didik Supriyanto, *Mendorong Demokratisasi Internal Partai Politik*, (Jakarta: Kemitraan bagi pembaruan Tata Pemerintahan, 2013), p. 13.

institutional channels of political parties.¹⁵ In this context, political parties try to control the political conflicts that occur in society so that their development does not exceed the limits of fairness. Therefore, the political party's conflict regulatory function can only be resolved by a political party when the political party has been able to organize and resolve internal political party conflicts. Political parties must have normative mechanisms and procedures for managing internal conflicts of democratic political parties, so that conflicts within political parties are not destructive and cause divisions.

One of the efforts of democratizing political parties internally is the institutionalization of internal party conflict resolution through the Political Party Court. In the political system of democracy, the existence of the Political Party Court itself is an inevitable necessity. This is because the Political Party Court is the most realistic and rational means to realize the portraits of independent and professional political parties. It is only an independent and professional political party that is believed to be able to encourage the creation of a democratic state of life. It also shows that the existence and role of the Political Party Court is urgently needed. The significance of this Political Party Court shows one more step towards the modern political party in Indonesia. Only, this institution needs to be strengthened, as well as given its rights more. Do not let this institution be a place to infiltrate the interests of groups who control the political party based on the prerogative of the elected chairperson. With a good and respectable Political Party Court, any disputes can be resolved in an adult manner so that party conflict can be minimized.¹⁶

The issue of strengthening is important in order to ensure the maturation process of political parties as elans vital democracy in the resolution of internal conflicts. The formation of the Political Party Court is essentially to support the functioning of political parties in a democratic state. The availability of a mechanism for resolving the internal conflicts of political parties is seen as a way out of the various conflicts of interest that often holds in a political party, given the diverse mosaic of interests that exist within a political party, which is very vulnerable to conflicts of interest in order to achieve a goal. The absence of a conflict resolution mechanism would precisely make the political party incapable of performing its function for the road to egalitarian democracy. Precisely with this Political Party Court will be able to answer the expectations of the people who want the creation of an independent political parties, professional and dignified, so as to contribute in delivering the democratic state order.

The necessary prerequisites for such a condition are the clarity of the position and role of the Political Party Court in the settlement of interstate political conflicts. This clarity is important

¹⁵ Jimly Asshiddiqie, *Pengantar Ilmu...op.cit.*, p. 409.

¹⁶ Thomas Meyer, *Peran Partai Politik dalam Sebuah Sistem Demokrasi: Sembilan Tesis*, (Jakarta: Frederich Ebert Stiftung (FES) Perwakilan Indonesia, 2012), hlm 27-28.

because the state through the Political Party Laws has delegated authority to the Political Party Court as an organ of a political party that settles all forms of internal disputes within the party. The Political Party Laws positions the Political Party Court functionally to perform the function of quasi judiciary. It's just that it becomes meaningless due to the ambiguity of the regulation norm of the Political Party Laws itself which opens up space for not to be respected and respected every decision of the Political Party Court in resolving internal conflicts. In the context of strengthening the next Political Party Court, the idea of making it the only channel of internal party dispute resolution of political parties to be a considerable idea. Strictly speaking, the internal conflicts of political parties only become the jurisdiction and competence of the Political Party Court, and the verdict is final and binding, in the sense that it can no longer be brought to district court. The idea thus departs from the idea that one function of a political party is "as a means of regulating conflict, a Political Party Lawsing as a means of aggregation of interests that channel different interests through the institutional channels of political parties".¹⁷

The reconstruction of the role of the Political Party Court stems from the will to make the Political Party Court the only internal political party dispute settlement channel to be followed by (i) the improvement of the regulatory mechanism arrangement and (ii) the process of filling the judges' position to the Political Party Court. *Firstly*, because the Political Party Laws delegates the mechanism of conflict resolution through AD/ART of political parties as its procedural law, the Political Parties Act must provide further confirmation regarding what will be regulated in the AR/ART of the Political Parties so that the procedural law governing how the Political Party Court exercises its authority becomes clear and does not open the space for double interpretation. The existence of the procedural law of the Political Party Court becomes important to be able to ensure the function of judicial quasi which becomes the authority of the Political Party Court can run as desired by the Political Party Laws. *Secondly*, one of the issues concerning the low trust on the Political Party Court is related to the independence and impartiality of judges who hear internal party conflicts. The dysfunction of the Political Party Court originated with the filling of the judges of the Political Party Court conducted in an undemocratic manner. Most judges of the Political Party Court are elected on subjective judgment of elected party chiefs. Consequently, decisions taken by the dominant Political Party Court are influenced by the interests of party chairpersons. Therefore, it is necessary to affirm and strengthen the independence and impartial guarantee of the judges of the Political Party Court.

To ensure the independence and impartiality of this judge, there are some important urgent things to be reconstructed. *Firstly*, the filling of a judge of the Political Party Court should not be determined by the party chairperson, but is determined by a political party through the highest

¹⁷ Jimly Asshiddiqie, *Pengantar Ilmu...loc.cit.*

party decision making body at the same level as the National Congress or Mukhtamar. The authority of the National Congress or Mukhtamar was intended not only to elect the party chairperson, but also to elect party members who would fill the judges' positions at the Political Party Court. Such thinking is in line with the spirit of Article 32 Paragraph (2) of the Political Party Law which stipulates that "... *a Court of Political Parties or other designation established by Political Parties*". That is, the article should be interpreted that the filling of the position of judge of the Political Party Court is the authority of political party which in other sense, becomes the sovereignty of the member of the political party concerned. In this context, judges of the Political Party Court are elected by and accountable only to party members of the National Congress or Mukhtamar, not to party chairpersons. Such a model positions the Political Party Court and the party leaders presided over by the chairman in an equal position and mutually compensates, so that the presence of the Political Party Court becomes more independent in carrying out its functions and roles as an organ of internal party conflict disputes. The construction of such a model also at the same time disconnects the relationship pattern that is subordinated to the Political Party Court against the party leader, which can affect the independence and impartiality of the Political Party Court in examining, hearing, and deciding disputes within political parties. *Secondly*, in addition to clarifying the position of the Political Party Court, the urgent need to be reconstructed is related to the composition of the judge as well as the criteria required as a judge of the Political Party Court. In the future, the number of judges who examine, hear, and decide must be odd (unlike the composition of judges in the Golkar Political Party Court amounting to four judges). In addition, the composition of the judges of the Political Party Court should be filled by party cadres who have been qualified in the field of law and have undoubted credibility so that their impartiality can be maintained. However, it should also be considered to be filled with people from outside parties who are concerned with the future of political parties in performing their functions as *elan vital* democracy.

The reconstruction of the role of the Political Party Court as described above is a legal political *ijtihad* which must be realized in order to ground the principles of constitutional democracy as the democratic model desired by the constitution. A constitutional democracy that should be implemented by democratic actors is a democracy that is rooted in the soul of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "*sovereignty in the hands of the people is carried out in accordance with the Constitution*", and reaffirmed in Article 1 Paragraph (3), "*the state of Indonesia is the rule of law*". For Harjono, in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia contains two principles at the same time, namely the principle of democracy which states that sovereignty is in the hands of the people and the principle of the rule of law or the element of constitutionalism because the

exercise of sovereignty is subordinated to the constitution as the supreme law.¹⁸ Still according to Harjono that the concept of a democratic state essentially has two content of meaning. First, the content of democracy as a political system that concerns the method or way in making the decision. Second, the content of the law in which there is substantive value, that is the appreciation of the constitutional rights.¹⁹ In such a sense, the democracy organized by political parties is a democracy restricted by law, both procedures and substances. This is the meaning of constitutional democracy.²⁰

The settlement of internal political party conflicts through the Political Party Court is a form of embodiment of constitutional democracy adopted by the Indonesian state. The presence of the Political Party Court is nothing but to care for democracy based on law. After all political parties as a pillar of democracy need to be organized and perfected to create a democratic political system in order to support an effective presidential system. Structuring and perfection of political parties is not only directed to the strengthening of the function of political recruitment in the framework of filling political positions, but far from that form the attitude and behavior of patterned or systemic political parties that formed a political culture that supports the basic principles of the democratic system. This is indicated by the attitude and behavior of political parties that have a system of internal conflict resolution of political parties in an adult and independent way. The ability of political parties to manage internal conflicts independently and responsibly determines whether the political party can perform its function as a conflict regulator in society. However conflict always exists in every society, let alone in a heterogeneous society such as in Indonesia holds latent conflict due to the diversity of interests that exist within the society itself. It is in this context that a political party is required to contribute to the resolution of the conflict. Political parties are partly responsible for ensuring that conflicts in society do not affect the sterilization and cultivation of democracy. The role and function of such a political party can only be realized when the process of internal democratization of political parties takes place dynamically and directed in accordance with the essence of its existence as the main actor of democracy within the framework of constitutional democracy namely democracy based on constitutional norm and law.

4. CONSLUSION

The existence of the Court of Justice for a political party is intended not only to carry out the function of (i) the resolution of the conflict in the political party body, but also to act as (ii) the

¹⁸ Harjono, *Konstitusi Sebagai Rumah Bangsa, Pemikiran Hukum Dr. Harjono, S.H., M.C.L Wakil Ketua Mahkamah Konstitusi*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), p. 439

¹⁹ *Ibid.*, p. 445.

²⁰ Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*, (Jakarta: Raih Asa Sukses, 2015), p. 21.

guardian of democracy and simultaneously (iii) the enforcers and guardians of constitutionalism principles in political parties. As an organ of a political party, the Political Party Laws has juridically delegated authority and positioned the Political Party Court functionally to carry out the function of quasi judiciary. The Political Party Court is oriented to strengthen the independence of political parties in carrying out its functions as one of the pillars of democracy. Nevertheless, the existence of the Political Party Court becomes meaningless due to the ambiguity of its regulatory norms in the Political Party Laws. There are still a number of norms related to the existence and role of the Political Party Court in the Political Party Laws which seems ambiguous and caused legal complications in its application. Given that the existence and role of the Political Party Court in the Political Party Laws still creates problems in its implementation as a result of the ambiguity of the norm, it is time for the existence and role of the Political Party Court to be reconstructed in accordance with the spirit of internal party democratization. The reconstruction is carried out in the form of (i) the improvement of the regulatory mechanism arrangements and (ii) the clarity of the standing, independence and impartiality of the judges of the Political Party Court. The reconstruction of the role of the Political Party Court is a political *ijtihad* that must be realized in order to ground the principles of constitutional democracy as the democratic model desired by the constitution. The presence of the Political Party Court is none other than to treat democracy based on the constitution.

REFERENCES

- Ahmad Sukardja, *Hukum Tata Negara dan Hukum Administrasi Negara Dalam Perspektif Fikih Siyasah*, Sinar Grafika, Jakarta, 2012.
- Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*, Raih Asa Sukses, Jakarta, 2015.
- Bagir Manan, "Demokratisasi Partai Politik", *Makalah dalam Konferensi Nasional Hukum Tata Negara Ke-3*, Pusat Studi Konstitusi Universitas Andalas, Padang, 5 September 2016.
- Bambang Setiawan dan Bestian Nainggolan, *Partai-Partai Politik di Indonesia*, Penerbit Kompas, Jakarta, 2004.
- Cross P. William & Katz S. Richards, *The Challenges of Intra-Party Democracy*, Oxford University Press, United Kindom, 2013.
- Debora Sanur L, "Manajemen Konflik Partai Politik", *Jurnal Info Singkat*, Vol. VII, No.07/I/P3DI/April/2015, Pemerintahan Dalam Negeri, Jakarta, 2015.

Firdaus, “Implikasi Sistem Kepartaian Terhadap Stabilitas Pemerintahan Dalam Sistem Ketatanegaraan Indonesia Sebelum dan Sesudah Amandemen UUD 1945”, *Disertasi*, Pascasarjana Universitas Padjadjaran, Bandung, 2012.

G. Lowell Field, *Government in Modern Society*, McGraw-Hill Book Company, Inc., New York-Toronto-London, 1951.

Hans Kelsen, *Teori Umum Tentang Hukum dan Negara*, Penerjemah: Raisul Muttaqien, Nusamedia-Nuansa, Bandung, 2006.

H. Anto Djawamaku, “Percehan Partai Politik, Pemberantasan Korupsi dan Berbagai Masalah Politik Lainnya”; *Jurnal Analisis CSIS*, Vol. 34, No. 2, 2005.

Harjono, *Konstitusi Sebagai Rumah Bangsa, Pemikiran Hukum Dr. Harjono, S.H., M.C.L Wakil Ketua Mahkamah Konstitusi*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, 2008.

Harold J. Laski, *Grammar of Politics*, Yale University Press, Yale, 1925.

Hugh Mall dkk., *Resolusi Damai Konflik Kontemporer*, Rajawali, Jakarta, 2002.

Ichlasul Amal (ed), *Teori-Teori Mutakhir Partai Politik*, Tiara Wacana, Yogyakarta, 1988.

Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, RajaGrafindo Persada, Jakarta, 2014.

-----, *Kemerdekaan Berserikat, Pembubaran Partai Politik dan Mahkamah Konstitusi*, Sekretariat Jenderal dan Kepaniteraan MKRI, Jakarta, 2006.

-----, *Hukum Tata Negara dan Pilar-Pilar Demokrasi, Serpihan Pemikiran Hukum, Media dan HAM*, Konstitusi Press, Jakarta, 2005.

-----, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Cetakan kedua, Bhuana Ilmu Populer, Jakarta, 2008.

Josh Maiyo, “Political Parties and Intra-Party Democracy in East-Africa – From Representative to Partisipatory Democracy”, *Thesis*, Laiden University, Netherland, 2008.

Juan J Linz & Alfred Stepan, *Problem of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, 1996.

Katz S. Richard & William Crotty (ed), *Handbook of Party Politics*, Sage Publication, London, 2006.

Laura Nader & Harry F. Todd, *The Disputing Process Law in ten Societies*, University Columbia Press, New York, 1978.

Leo Agustino, “Konflik dan Pembangunan”, *Jurnal Analisis CSIS*, Vol. 33, No.3, 2004.

M. Afif Abdullah, *Politik Hukum Ratifikasi Konvensi HAM Di Indonesia: Upaya Mewujudkan Masyarakat Yang Demokratis*, Pustaka Pelajar, Yogyakarta, 2005.

Maruto M.D. & Anwari WMK, *Reformasi Politik dan Kekuatan Masyarakat, Kendala dan Peluang Menuju Demokrasi*, LP3ES, Jakarta, 2002.

Nazaruddin Sjamsuddin, Zukifli Hamid, & Toto Pribadi, *Sistem Politik Indonesia*, Karunika-Universitas Terbuka, Jakarta, 1988.

Ramlan Surbakti, *Memahami Ilmu Politik*, Gramedia Widiasarana Indonesia, Jakarta, 1994.

----- dan Didik Supriyanto, *Mendorong Demokratisasi Internal Partai Politik, Kemitraan bagi pembaruan Tata Pemerintahan*, Jakarta, 2013.

Richard H. Pildes, “The Constitutionalization of Democratic Politics”, *Harvard Law Review*, Vol. 118:1, 2004.

Sigmund Neumann, *Modern Political Parties, Comparative Politics : A Reade*, The Free Press of Glencoe, London, 1963.

Susan Novri, *Sosiologi Konflik dan Isu-isu Konflik Kontemporer*, Kencana, Jakarta, 2009.

Susan Scarrow, “Development in Party Communications” in *Implementing Intra-Party Democracy*, National Democratic Institute for International Affairs (NDI), USA, 2005.

Syamsuddin Haris, “Pola dan Kecenderungan Konflik Partai Politik Masa Orde Baru”, *Jurnal Analisis CSIS*, 1988.

-----, “Mengelola Konflik Partai Politik” *Harian Kompas*, 29 Desember 2014.

Thomas Meyer, *Peran Partai Politik dalam Sebuah Sistem Demokrasi: Sembilan Tesis*, Frederich Ebert Stiftung (FES) Perwakilan Indonesia, Jakarta, 2012.

Tim ICCE, *Buku Pendidikan Kewarganegaraan (Suplemen)*, ICCE-TAF, Jakarta, 2004.
“Aturan Mahkamah Partai Dinilai Inkonsisten”, www.hukumonline.com.